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SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102			SPAHN, GAY	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL M. BELLICK, LINDA S. BAUGH,
JOHN H. WRIGHT, and ALAIN R. DENIS

Appeal 2008-001813
Application 10/821,334
Technology Center 3600

Decided: April 21, 2010

Before: LINDA E. HORNER, WILLIAM F. PATE III, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1-18. We have jurisdiction under 35 U.S.C. § 6(b).

The claims are directed to a sleeping bag with a vented footbox. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A vented sleeping bag comprising:

an elongate shell defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user and an underlying portion adapted to underlie said user;

a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell; and

a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Matsuda	US 4,072,345	Feb. 7, 1978
Garrigues	US 5,881,405	Mar. 16, 1999
Cantwell	US 6,175,976 B1	Jan. 23, 2001

REJECTIONS

Claims 1, 2, 5, 6, 10-13, 15, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrigues and Cantwell. Ans. 3.

Claims 10 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrigues, Cantwell, and Matsuda. Ans. 9 and 21.

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cantwell and Garrigues. Ans. 11.

ANALYSIS

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the determination that the applied prior art does not establish the prima facie obviousness of the claims on appeal. For this reason, the rejections on appeal are reversed. Our reasons follow.

With regard to the issue of claim term construction, we agree with the Appellants that the claim term “vent” has an ordinary and customary meaning of “an opening or hole for the escape or passage of something (as of a gas or liquid) or for the relief of pressure within something (as a boiler).” App. Br. 7. Not only is this the ordinary and customary meaning, it is the meaning ascribed to the term “vent” in the applicable prior art. For instance, Garrigues defines “vent” in like manner when it describes and illustrates foot vent 40. *See* col. 3, ll. 40-65.

Turning to the references applied by the Examiner, Garrigues shows a bivy sack with a ventilation system comprised of head opening 20, vent duct 30, and foot vent 40. Col. 2, ll. 46-65. The foot vent 40 is defined by the

edge of the overlying portion 14 and the upper one third of end piece 16. Col. 3, ll. 40-50. Therefore, it is our finding that the foot vent 40 is not in the overlying portion of the Garrigues bivy sack. The Examiner reads Appellants' claimed vent as a vent system comprised of head opening 20, vent duct 30, and foot vent 40. Ans. 25-6. However, this reading does not comport with the reasonable claim construction of the term "vent" we have recognized *supra*, inasmuch as the vent system, particularly the long vent duct 30, is not an opening or hole for the escape or passage of fluid but rather a long tube to convey the fluid to and from foot vent 40 and head opening 20. We also acknowledge the Examiner's argument that the intake end of the vent duct 30 is an opening or hole for the escape or passage of gas. Ans. 28. However, the intake end does not appear to be in the overlying portion of the bivy sack. Rather, it appears to be directly above the end piece 16. Fig. 4; col. 4, ll. 21-22. While it could be said that the jersey knit 62 of Garrigues comprises vents for the release of fluid from the interior of the bag, these vents would not be selectively closed by a closure as required by the independent claims.

Cantwell discloses a sleeping bag with openings 34 in the lateral portions of the foot of the sleeping bag. *See* col. 3, ll. 13-35. These openings allow pockets 32 which are initially folded inside the interior of the bag to extend outwardly of the tapered profile of the bag when the openings 34 are unzipped. *Id.* Thus Cantwell can convert from a mummy-style sleeping bag to a rectangular sleeping bag. Applying our proper construction of the claim term "vent" to Cantwell, we find that the openings 34 cannot be regarded as vents.

Matsuda discloses a stroller with a mesh cover 23 that is collapsible when the vent is closed. Col. 2, ll. 18-35.

Accordingly, none of the references cited by the Examiner shows a vent in the overlying portion of a sleeping bag or bivy sack. Since the prior art lacks this element of Appellants' claimed subject matter, or alternatively, the Examiner has not established that this feature is in the understanding of one of ordinary skill, we are constrained to reverse all obviousness rejections on appeal.

DECISION

The rejection of claims 1, 2, 5, 6, 10-13, 15, 17 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Garrigues and Cantwell is reversed.

The rejection of claims 10 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Garrigues, Cantwell, and Matsuda is reversed.

The rejection of claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over Cantwell and Garrigues is reversed.

REVERSED

nhl

SENNIGER POWERS LLP
100 NORTH BROADWAY
17TH FLOOR
ST LOUIS MO 63102